

**IN THE CHANCERY COURT FOR LEWIS COUNTY
AT HOHENWALD, TENNESSEE**

IN RE:)	
)	
SENTINEL TRUST COMPANY)	NO. 4781
)	
)	

**COMMISSIONER-IN-POSSESSION’S AND RECEIVER’S MOTION FOR APPROVAL
OF SETTLEMENT AGREEMENT CONCERNING FIDELITY BOND CLAIM**

I. INTRODUCTION

Pursuant to T.C.A. § 45-2-1504(a)(2), the Commissioner-in-Possession (“Commissioner”) and the Sentinel Trust Receiver (“Receiver”) move the Court to approve the settlement of a claim submitted by the Commissioner and the Receiver to National Union Fire Insurance Company of Pittsburgh (“National Union”) regarding a fidelity bond issued to Sentinel Trust Company by National Union (“Fidelity Bond Claim”). T.C.A. § 45-2-1504(a)(2) requires Court approval of the compromise or settlement of a claim held by the Commissioner/Receiver on behalf of Sentinel Trust Company (“Sentinel Trust”) if the claim is worth in excess of \$500.00. As set forth below, the Fidelity Bond Claim is in excess of that \$500.00 amount, therefore, Court approval is required.

II. BACKGROUND

National Union issued to Sentinel Trust a Financial Institution Bond with an effective coverage period of April 18, 2004 through April 18, 2005 -- while noted as a “Financial Institution Bond,” the coverage provided under the bond protected Sentinel Trust from the dishonest actions of its employees and, thus, has been referred to (and will be referred to herein)

as a fidelity bond (the “Fidelity Bond”). The Fidelity Bond provided a maximum face amount of \$750,000.00 with a \$100,000.00 deductible. The Fidelity Bond also provided for various rights of subrogation by National Union in relation to funds paid by it under the Fidelity Bond vis-à-vis recoveries by Sentinel Trust from the dishonest employee.

Concurrent with the May 18, 2004 institution of this Receivership, the Commissioner and Receiver gave notice of a potential or actual claim under the Fidelity Bond. Thereafter, the Receiver provided additional information to National Union, including a copy of the Complaint filed in this Court against Danny Bates and other Sentinel Trust employees, officers, directors and shareholders (Lavender, et al v. Bates, et al, #4980). The Commissioner and Receiver have also informed National Union that, in conjunction with the filing of the Lavender, et al v. Bates, et al action, a lien *lis pendens* was filed in the Lewis County, Tennessee Register of Deeds Office concerning real property located at 205 Bastin Cemetery Road in Lewis County, Tennessee.

National Union disclaimed any obligation and asserted various defenses to coverage under the Fidelity Bond. The Commissioner and Receiver, however, asserted that coverage under the Fidelity Bond existed for various fidelity losses suffered by Sentinel Trust. In light of that dispute, the Commissioner and Receiver and National Union entered into good faith settlement discussions which have resulted in a compromise and settlement of the Fidelity Bond Claim. A condition precedent, however, to the compromise and settlement of the Fidelity Bond Claim is the entry of a final, non-appealable order approving the Commissioner’s and Receiver’s entry into the settlement.

III. COMPROMISE AND SETTLEMENT

Attached as **Exhibit A** is the Agreement and Policy Release that has been executed by National Union, the Commissioner and the Receiver. The basic terms are that, upon entry of a

final, non-appealable order approving the settlement, a) National Union will pay \$400,000.00 to the Receiver, b) the Commissioner and Receiver, on their respective behalves and on behalf of Sentinel Trust, will release National Union from all further claims under the Fidelity Bond and c) if and when the Commissioner and Receiver obtain the right to sell the 205 Bastin Cemetery Road property, they will pay fifty percent (50%) of whatever net proceeds they receive above \$650,000.00 to National Union up to the point that National Union recoups the \$400,000.00 paid in settlement of the Fidelity Bond Claim.

IV. ARGUMENT IN FAVOR OF APPROVING COMPROMISE AND SETTLEMENT

The Commissioner and Receiver assert, for numerous reasons, that this compromise and settlement should be approved. First, the settlement amount of \$400,000.00 is just over sixty percent (60%) of the policy limit (as reduced by the deductible). This reduction from the policy limit is warranted given a risk analysis of the chances that National Union could prevail on a number of policy defenses and policy exclusions contained in the Fidelity Bond. Second, by settling the Fidelity Bond claim at this time, the Commissioner and Receiver would avoid having to expend material resources in a “coverage” fight with National Union -- a “coverage” fight in which, as referenced above, National Union could prevail. Third, the payment of the \$400,000.00 is not dependent upon the Commissioner and Receiver being successful in the Lavender, et al v. Bates, et al action. Certainly, the Commissioner and Receiver will use all reasonable efforts to obtain a judgment in that action and to collect against the 205 Bastin Cemetery Road property, but such is not a pre-condition of the settlement. Fourth, the payment of fifty percent (50%) of net proceeds from any sale of the 205 Bastin Cemetery Road property above \$650,000.00 (until National Union recoups the \$400,000.00 settlement amount) is a

reasonable way in which to address National Union's subrogation interest under the Fidelity Bond.

In sum, the Commissioner and Receiver assert that the settlement is reasonable. It causes a significant amount of money to come into the Sentinel Trust Receivership; it reflects an appropriate risk analysis regarding policy defenses assertable by National Union; it presents a reasonable treatment of National Union's subrogation rights and it avoids the expenses and uncertainties of litigation. For these reasons, the Commissioner and Receiver urge the approval of the Agreement and Policy Release attached as **Exhibit A**.

**V. REQUEST TO ENTER ORDER APPROVING
COMPROMISE AND SETTLEMENT AS FINAL ORDER
PURSUANT TO RULE 54.02 TENN.R.CIV.P.**

The compromise and settlement is conditioned upon the entry of a final order approving it. The interests of certainty and finality regarding the payment of funds to the Receiver and the providing of releases to National Union strongly weigh in favor of the Court entering any order approving the settlement as final under Rule 54.02 Tenn.R.Civ.P. The Commissioner and Receiver assert that there is no just reason for delaying an order approving the settlement of the Fidelity Bond Claim from being entered as final. Accordingly, such entry, under Rule 54.02 Tenn.R.Civ.P. is requested.

**VI. TIMEFRAME FOR FILING
RESPONSE IN OPPOSITION / OBJECTION**

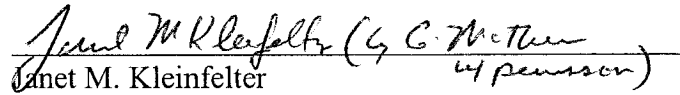
Pursuant to previous Order of Court, entered on August 8, 2006, any response in opposition or objection to this Motion must be filed with the Court, delivered to the Receiver's counsel and mailed to the Court's chambers on or before Monday, March 19, 2007 (i.e., eleven (11) calendar days after the filing of the Motion). If timely opposition or objection to this Motion is made, a hearing will be set by the Court, notice of which will be filed and served

reasonably prior thereto. If no timely opposition or objection to this Motion is made, then the Commissioner and Receiver will tender to the Court a proposed order granting the relief requested hereunder, and the Court may sign and have entered that proposed order without further notice.

VII. CONCLUSION

For the reasons stated herein, the Commissioner and Receiver move for approval of the compromise and settlement of the National Union Fidelity Bond Claim, a copy of the Agreement and Policy Release being attached as **Exhibit A**. Moreover, for the reasons stated, it is requested that the order, granting the relief herein requested, be entered as a final order pursuant to Rule 54.02 Tenn.R.Civ.P.

Respectfully submitted,


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CERTIFICATE OF SERVICE

This is to certify that on March 6th, 2007 a copy of the foregoing Motion has been sent by First Class U.S. Mail, postage paid, and by Federal Express as noted, to:

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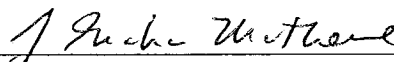
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